

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.1171 OF 2014
WITH
CIVIL APPLICATION NO.1412 OF 2014
IN
APPEAL FROM ORDER NO.1171 OF 2014**

Anil Laxman Kambli

.. Appellant

Vs.

The Municipal Corporation
of Greater Bombay

.. Respondent

Mr.Anil L. Kambli, appellant present in person

Mr.Vinod Mahadik for the BMC

CORAM : K.K.TATED, J.
DATED : 20/01/2015

PC:

1 Heard the appellant party in person and counsel for the respondent Corporation.

2 By this Appeal from Order the appellant challenges the order dated 11.7.2014 passed by Bombay City Civil Court at Bombay in Notice of Motion No.2995 of 2010 rejecting the appellant's Notice of Motion to grant stay and / or order of injunction against respondent Corporation from taking any action pursuant to the notice dated 20.11.2010.

3 It is the case of the plaintiff that in the year 1991 he acquired the B.M.C.Sq.Stall Licence no.12427 and Rolling Shutter Licence no.861412726. The same was sold to one Mr.Pradeep Bihari Gupta by agreement for sale dated 9.10.1991. He submits that though these facts were informed to the respondent Corporation in the year 1991, they failed and neglected to show the name of Mr.Gupta as a licence holder. He submits that as on today, the appellant original plaintiff is not in possession of the suit structure and not carrying out any business on the basis of B.M.C.Sq.Stall Licence no.12427. He submits that these facts are not considered by the trial court at the time of passing order dt.11.07.2014. Hence, the impugned order dated 11.07.2014 be set aside and Notice of Motion be made absolute.

4 The learned counsel for the respondent Corporation vehemently opposed the present Appeal from Order. He submits that as on today, the stall licence stands in the name of appellant. He submits that the appellant is working with Mumbai Port Trust. He sublet the same to third party. Therefore, he is not entitled to hold the said licence.

5 I have heard both the sides at length. Admittedly, in the present proceeding as on today the stall licence no.12427 stands in the name of appellant. There is no dispute that as on today the appellant is working with Mumbai Port Trust. As per the provisions of Mumbai Municipal Corporation Act, 1888 u/s.313, 313A and 313B no person shall hawk or expose for sale in any public place or in any public street any article whatsoever, without permission from

Corporation. As on today 3rd party is in possession of suit structure. These facts are considered by the trial court at the time of deciding point number no.1. The trial court specifically held as under:

“It is also gathered that specifically plaintiff has approached to the Labour Court and got retested/reappointed in Port Trust on his job in the year 2006. Moreover, the documents produced shows that he has also transferred the licence in the name of Pradeep Gupta to whom he has sold the stall. Under such circumstances and when he has transferred it in the name of Mr.Pradeep Gupta with the fear of his job but when his service is continued and record also shows that Mr.Pradeep Gupta was also informed by the corporation that his application / request cannot be considered, I hold that relief as sought for cannot be considered but in order to give opportunity to plaintiff to approach to the BMC for following necessary procedure, I hold it proper to give certain time and therefore, I answered point no.1 in the negative.”

6 In any case, as per the agreement of sale dated 9.10.1991, the appellant already transferred right, title and interest in respect of the said licence in favour of the Mr.Pradeep B. Gupta In view of these facts, appellant original plaintiff have no right, title and interest in the B.M.C.Sq.Stall Licence no.12427 and Rolling Shutter Licence no.861412726.

7 Considering these facts, I do not find any substance in the present Appeal from Order. Same is rejected.

8 In view thereof, Civil Application does not survive. The same stands dismissed as infructuous.

(K.K.TATED, J.)